

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND, NORTHERN DIVISION**

BELLBOY IMPORT CORPORATION
d/b/a AMERICAN FOOD SERVICES
INTERNATIONAL,

Plaintiff,

v.

VIVIAN VAN HORN
a/k/a VIVIAN NG,

Defendant.

VIVIAN VAN HORN,

Counter-Plaintiff/Defendant,

v.

BELLBOY IMPORT CORPORATION
d/b/a AMERICAN FOOD SERVICES
INTERNATIONAL,

Counter-Defendant/Plaintiff

and

MARTIN BELL, individually and as Vice
President of Bellboy Import Corporation,

Third-Party Defendant.

MOTION TO ENFORCE SUBPOENA

Now comes the Plaintiff, Bellboy Import Corporation d/b/a American Food Services International (“Bellboy”), by and through counsel, Andrew Radding, Gregory M. Kline and the law firm of Adelberg, Rudow, Dorf & Hendler, LLC, pursuant to Federal Rule of Civil Procedure 45, to move this Court for an Order compelling compliance with a subpoena served upon Michael Imgarten (“Imgarten”) and state as follows:

1. On March 25, 2003, Bellboy served a deposition subpoena duces tecum upon Imgarten requesting his appearance for a deposition scheduled for April 10, 2003 as well as the production of certain documents on the same date. Ex. A - Subpoena to Michael Imgarten.

2. Late in the afternoon of April 8, 2003, Imgarten served upon Bellboy objections to the subpoena duces tecum. Ex. B - Michael Imgarten's Objection to Subpoena.

3. Imgarten baldly asserted among his objections that Bellboy sought the subpoena for an improper purpose, that Bellboy sought discovery in another case, that insufficient time was allowed to respond to the subpoena and that Bellboy failed to take steps to avoid imposing an undue burden upon Imgarten. Id.

4. Imgarten agreed to voluntarily appear for deposition and the subpoena was served upon the mutual acceptance of the date by the deponent and counsel in this case. Despite his objections, Imgarten did appear for deposition on April 10, 2003. Imgarten stated during that deposition that he had limited documents which were responsive to most of the requests contained in Bellboy's subpoena.¹ Counsel for Bellboy offered to limit some of the document requests contained in the subpoena to Imgarten in an effort to resolve the matter. No agreement was reached concerning the production of documents by Imgarten.

5. The subpoena was served 16 days before the time for production outlined in the subpoena and comports with the requirements of Federal Rule of Civil Procedure 45(c)(2)(B).

6. Counsel for Bellboy offered to reschedule the deposition for a later date upon receipt of the objections served upon Imgarten, in part, to allow additional time for production of

¹The transcript for this deposition has not yet been produced.

documents Imgarten stated was needed. This offer was rejected by both Imgarten and counsel for Defendant/Counter-Plaintiff/Third-Party Plaintiff Vivian Van Horn (“Van Horn”).

7. The subpoena duces tecum included 10 requests for documents. Ex. A. Each request sought documents related to the issues in the instant litigation, including policies and procedures which Bellboy alleges were violated by Van Horn, documents evidencing Van Horn’s claim of entitlement to certain property Bellboy has alleged was converted by Van Horn as well as documents indicating that Van Horn performed services for Imgarten’s rival companies while an employee of Bellboy. Id.

8. Van Horn has contended that Imgarten was her immediate supervisor while an employee of Bellboy. Ex. C - Defendant’s Responses to Interrogatories at p. 5. Van Horn further contends that Imgarten has “direct knowledge concerning credit, insurance and general export documentation policies for AFSI during the period of my employment at Bellboy AFSI.” Id.

9. Van Horn has also acknowledged that she performed work for Imgarten’s rival companies while an employee of Bellboy. Id. at p. 9.

10. Given Van Horn’s responses to discovery as well as her deposition testimony, Bellboy has sought documents from Imgarten which it reasonably calculates will lead to the discovery of admissible evidence on these claims. For this reason, and for no other, did Bellboy issue the subpoena duces tecum to Imgarten.

11. As such, the objections raised by Imgarten are without merit and Imgarten should be compelled, pursuant to Federal Rule of Civil Procedure 45, to produce the documents in his possession, custody and control which are responsive to Bellboy’s subpoena.

WHEREFORE, Bellboy respectfully requests that this Honorable Court enter an Order compelling Imgarten to produce the documents in his possession, custody and control which are responsive to Bellboy's subpoena and award Bellboy any other relief to which it may be entitled.

\s\

ANDREW RADDING

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Attorneys for Bellboy Import Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15TH day of April, 2003, a copy of Bellboy Import Corporation's Motion to Enforce Subpoena was electronically filed with copies to Stephen B. Caplis, Esq. and Andrea Leahy-Fuckeck, Esq., Whiteford, Taylor & Preston, LLP, 7 Saint Paul Street, Baltimore, MD 21202-1626, Attorneys for Defendant Vivian Van Horn a/k/a Vivian Ng and Paul Maloney, Esq., Carr Maloney, P.C, 1667 K Street, N.W., Suite 1100, Washington, DC 20006, Attorney for Counter-Defendant Bellboy Import Corporation.

Bellboy has also served its Motion to Enforce Subpoena by regular mail to Julie C. Janofsky and David M. Wyand, Brocato, Price & Bushel, P.A., 210 North Charles Street, Suite 1200, Baltimore, Maryland 21201, and Paul H. Gardner, Esquire, Goller, Gardner and Feather, P.C., 131 East High Street, Jefferson City, Missouri 65101, Attorneys for Imgarten.

\s\

ANDREW RADDING (Bar No. 00195)
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